

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 FEA-01 CIAE-00 DODE-00 NSAE-00

NSCE-00 SSO-00 USIE-00 INRE-00 AGR-05 CEA-01 COME-00

FRB-03 H-01 INR-07 INT-05 L-02 LAB-04 NSC-05 PA-01

RSC-01 AID-05 CIEP-01 SS-15 STR-01 TAR-01 TRSE-00

PRS-01 SP-02 OMB-01 /083 W
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FM AMEMBASSY BUCHAREST

TO SECSTATE WASHDC IMMEDIATE 1531

C O N F I D E N T I A L SECTION 1 OF 2 BUCHAREST 0322

E.O. 11652: GDS

TAGS: EEWT, RO

SUBJECT: US-ROMANIAN TRADE AGREEMENT: CHANGES AND COMMENTARY

REF: BUCHAREST 321

1. FOLLOWING IS COMMENTARY ON CHANGES IN TEXT BASED ON CONVERSATIONS OF JANUARY 23 AND 24 WITH MINISTER NICOLAE OTHER THAN CLEARLY NON-SUBSTANTIVE LANGUAGE CHANGES AND CHANGES FOR STYLE.

2. IN PREAMBLE WE AGREED TO ADD REFERENCE TO QUOTE AMERICAN AND ROMANIAN UNQUOTE PEOPLES IN RESPONSE TO ROMANIAN REQUEST, IN VIEW OF SAME REFERENCE IN 1973 JOINT STATEMENT OF PRESIDENTS.

3. IN ARTICLE 2 PARA 2 AND INNUMERABLE SUBSEQUENT PARAS, PARTICULARLY IN ARTICLE 4 AND ANNEX 2, REFERENCE TO QUOTE NATIONALS UNQUOTE CHANGED TO QUOTE FIRMS UNQUOTE IN RESPONSE TO ROMANIAN POINT THAT CONTRACTS, REPRESENTATIONS AND COMMERCIAL TRANSACTIONS CONTEMPLATED IN AGREEMENT WILL NOT INVOLVE INDIVIDUALS. WE HAVE ADDED DEFINITIONS OF QUOTE FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS UNQUOTE (NEW ANNEX 3)

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TO INCLUDE SOLE PROPRIETORSHIPS SO U.S. INDIVIDUALS DOING

BUSINESS IN THAT FORM STILL COVERED. ROMANIAN LAW APPARENTLY WOULD NOT PERMIT CONCLUDING THESE TYPES OF CONTRACT WITH INDIVIDUALS AS SUCH. WE HAVE HOWEVER RETAINED REFERENCES TO QUOTE NATIONALS UNQUOTE IN PLACES WHERE WE FELT INDIVIDUALS IN NON-BUSINESS CAPACITY SHOULD BE COVERED AND GOR WILLING TO AGREE.

4. ARTICLE 4. PROVISION ON ACCESS TO COURTS MOVED FROM PARA 3 TO PARA 2 OF ARTICLE 4 SINCE BOTH INVOLVE RIGHTS TO WHICH ALL NATIONALS, AS OPPOSED TO FIRMS, SHOULD BE ENTITLED AND SINCE COURT ACCESS MAY BE CONSIDERED TO BE FUNCTIONALLY RELATED TO IMMUNITIES. NO SUBSTANTIVE CHANGE INVOLVED IN EITHER PROVISION.

5. ARTICLE 4 PARA 3 CLAUSE QUOTE INCLUDING CORPORATIONS, ETC. UNQUOTE DELETED AFTER EXTENSIVE DISCUSSION ON MEANING OF DOMICILE AND ROMANIAN REQUEST TO INSERT REFERENCE TO LOCATIONS OF HEADQUARTERS OF CORPORATIONS, ETC. NO SUBSTANTIVE CHANGE INVOLVED. DEFINITION OF FIRMS AND COMPANIES IN NEW ANNEX 3, DRAWING ON FCN TREATY FORMULATION, PROVIDES USEFUL CLARIFICATIONS. DEFINITION OF "REPRESENTATION" USEFUL IN POINTING OUT THAT IN ROMANIA A PARTICULAR, DEFINED FORM OF BUSINESS ORGANIZATION IS MEANT. ROMANIANS UNSURE RE U.S. LAW, WANTED WIDEST POSSIBLE DEFINITION OF REPRESENTATION FROM THEIR POINT OF VIEW, AND HAVE INDICATED THEY WANT TO CHECK THIS FURTHER. DO NOT ANTICIPATE ANY PROBLEMS.

6. ARTICLE 4 PARA 4 REFERENCE IN LAST SENTENCE TO QUOTE PRIVILEGES UNQUOTE CHANGE TO QUOTE FACILITIES UNQUOTE IN RESPONSE TO ROMANIAN OBJECTION THAT PRIVILEGES REFERS TO DIPLOMATIC, NOT COMMERCIAL, MATTERS. ALTHOUGH POINT IS ARGUABLE TO SAY THE LEAST, NO HARM DONE BY CHANGE.

7. IN ARTICLE 4 PARA 5 CHANGED FROM QUOTE TO RESIDE IN LOCALITIES OF THEIR CHOICE UNQUOTE TO QUOTE TO RESIDE AND TO OBTAIN APPROPRIATE HOUSING IN THE TERRITORY OF THE OTHER PARTY UNQUOTE IN FACE OF ROMANIAN REFUSAL TO KEEP PREVIOUSLY AGREED VERSION. ROMANIANS CITE INABILITY OF THEIR CITIZENS TO RESIDE WHERE THEY CHOOSE ANRGRESULTING EMBARRASSMENT IF U.S. BUSINESSMEN CONSPICUOUSLY GIVEN GREATER CONFIDENTIAL

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RIGHTS. DELEGATION CONCLUDED BETTER TO TAKE WHAT WE COULD GET BEFORE ROMANIAN POSITION HARDENED FURTHER. REFERENCE TO HOUSING CONSITUTES MODEST STEP FORWARD IN TOUCHY AREA.

8. NEW PARA 9 (ARTICLE 4) WAS PREVIOUSLY PARA 11 OF ANNEX 2, AND IS NOW IN ARTICLE 4 BECAUSE OF ITS APPLICABILITY TO ALL BUSINESSMEN, NOT JUST THOSE ASSOCIATED WITH REPRESENTATIONS.

9. ARTICLE 4 PARA 10 REFLECTS DESIRE OF ROMANIANS TO SPECIFY SEPARATELY THE NARROWER RIGHTS THEY ARE WILLING TO OFFER BUSINESS NOT HAVING A FORMAL REPRESENTATION IN ROMANIA. ALSO, PLACING PART OF PROVISIONS IN ANNEX (SAME DONE IN CONNECTION WITH PARA 11) OPTICALLY PREFERABLE FROM GOR POINT OF VIEW. PARA 10 APPLIES TO ALL BUSINESSMEN, EVEN THOSE SEEKING NEW CONTRACTS, AND EVEN THOUGH IT IS OBVIOUSLY GENERAL AND VAGUE MAY PROVIDE BETTER BASIS FOR ASSISTANCE TO THIS GROUP. RELATED PROVISION IN PART II ANNEX 2 AGREED TO AFTER LONG RESISTANCE BY GOR. SAME CONSIDERATIONS APPLY.

10. ARTICLE 4 PARA 11 IS MORE SPECIFIC REFERENCE TO FACILITATION MEASURES TO BE ACCORDED BUSINESSES WITH CONTRACTS BUT NOT FORMAL REPRESENTATIONS, E.G., FIRMS SUCH AS BOEING THAT PROVIDING TECHNICAL SERVICES HERE. NOT AS SPECIFIC AS REST OF ANNEX 2, BUT SEVERAL OF THE ITEMS, PARTICULARLY IN PART III ANNEX 2, SHOULD BE USEFUL. AS IN PARA 10 THIS REFLECTS ROMANIAN RELUCTANCE TO GIVE ANY RIGHTS TO BUSINESSES WITHOUT FORMAL REPRESENTATION, AND THEN DESIRE TO DEFINE MORE PRECISELY THE QUALIFIED SCOPE OF THESE RIGHTS.

11. ARTICLE 5 PARA 3 REFLECTS FACT THAT ROMANIA HAS SIGNED (BUT NOT YET RATIFIED) UCC AND HENCE HAS NO PROBLEM GRANTING U.S. NATIONALS FULL PROTECTION OF UCC. NICOLAE BELIEVES THIS FORMULA ACCEPTABLE, SAID WOULD CONFIRM. ASSUME NO U.S. PROBLEM IN PROVIDING RECIPROCAL TREATMENT.

12. ARTICLE 6 PARA 1 CHANGES QUOTE FINANCIAL TRANSACTIONS UNQUOTE TO ORIGINAL U.S. LANGUAGE QUOTE PAYMENTS, REMITTANCES AND TRANSFERS OF FUNDS OR FINANCIAL INSTRUMENTS UNQUOTE, IN RESPONSE TO ROMANIAN POINT WHICH WE CONSIDER SOUND THAT MFN TREATMENT FOR FINANCIAL TRANSACTION GENERALLY COULD REFER TO CREDIT TERMS AND IS OTHERWISE UNNECESSARILY AMBIGUOUS. CONFIDENTIAL

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LAST SENTENCE MODIFIED IN RESPONSE TO REQUEST OF CHAIRMAN ROMANIAN BANK FOR FOREIGN TRADE. NO SUBSTANTIVE CHANGE INTENDED.

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ACTION EB-07

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TO SECSTATE WASHDC IMMEDIATE 1532

C O N F I D E N T I A L SECTION 2 OF 2 BUCHAREST 0322

13. IN ARTICLE 6 PARA 2 NEW FIRST SENTENCE ON FINANCIAL
TRANSACTIONS IS SIMILAR TO ARTICLE 2 PARA 2 SENTENCE ON
COMMERCIAL TRANSACTIONS.

14. ARTICLE 7 PARA 1 AND 2. AFTER WE SENT BUCHAREST 270
(SEE PARA 16), GOR ACCEPTED REFERENCE TO QUOTE HIGH SEAS
UNQUOTE. SINCE GOR DID NOT YIELD ON REFERENCE TO QUOTE
CHARTER UNQUOTE, WE HAVE AGREED TO DELETE IT AS AUTHORIZED
STATE 014279.

15. IN ARTICLE 12 PARA 1 ROMANIAN LEGAL OFFICIALS ADVOCATED
ADDITIONS OF QUOTE BY THE TWO GOVERNMENTS UNQUOTE AFTER QUOTE
NOTICES OF ACCEPTANCE UNQUOTE WHICH DID NOT SEEM TO BE
SUBSTANTIVELY OBJECTIONABLE, ALTHOUGH DEVIATES FROM U.S.
STYLE IN, E.G., SOVIET AGREEMENT.

16. ADDED NEW PARA 3 TO ARTICLE 12 AS FOLLOWS: QUOTE ANNEXES
1, 2 AND 3 SHALL CONSTITUTE AN INTEGRAL PART OF THIS AGREEMENT
UNQUOTE.

17. ANNEX 1 PARA 1 D. PRIOR TO RECEIPT OF STATE 017750
(PARA 2 (C)) WE HAD ALREADY RAISED PROPOSED CHANGE, WHICH WAS
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ACCEPTED BY GOR. BELIEVE WE SHOULD NOT RAISE SUBJECT AGAIN
WITHOUT BEING SUPPLIED WITH NEW RATIONALE TO OFFER ROMANIANS.

18. IN ANNEX 2 PREAMBLE QUOTE PRIVILEGES UNQUOTE CHANGED
TO QUOTE FACILITIES UNQUOTE FOR REASONS SET FORTH PARA 6
ABOVE. CHANGE IN FORMER PREAMBLE, NOW PART I OF ANNEX 2,

ALSO MAKES CLEAR THAT AS FAR AS ROMANIA IS CONCERNED, PART I ANNEX 2 REFERS ONLY TO REPRESENTATIONS, I.E. BUSINESSES FORMALLY AUTHORIZED AND ESTABLISHED PURSUANT TO A DEFINED ROMANIAN PROCEDURE (SEE ANNEX 3). RIGHTS OF U.S. BUSINESSES OPERATING IN ROMANIA IN LESS FORMAL MANNER, I.E. TECHNICIANS AND REPRESENTATIVES COMING UNDER CONTRACT AND ALSO U.S. BUSINESSES COMING TO ROMANIA TO SEEK CONTRACTS NOW DEALT WITH IN ARTICLE 4 AND PARTS II AND III OF ANNEX 2. THESE CHANGES MADE AFTER MANY HOURS OF WRANGLING WITH ROMANIANS WHEN BECAME CLEAR THAT GOR VERY RELUCTANT TO EXPAND RIGHTS NOW PROVIDED BY LAW, PARTICULARLY RE EMPLOYMENT, FOR FOREIGN FIRMS WHICH HAVE NOT FORMALLY ESTABLISHED REPRESENTATIONS, AND INSISTED ON CLARIFYING DISTINCTIONS BETWEEN VARIOUS MODES OF DOING BUSINESS. DELEGATION FINALLY CONCLUDED THAT REVISED PROVISIONS ARTICLE 4 AND ANNEX 2 GO AS FAR AS ROMANIANS WILL GO.

19. ANNEX 2 PART I PARA 1 AND 2 TERM QUOTE ACCREDITATION UNQUOTE CHANGED TO QUOTE AUTHORIZATION UNQUOTE SINCE FORMER MORE APPROPRIATE TO DIPLOMATS AND TERM QUOTE AUTHORIZATION UNQUOTE MORE ACCURATELY REFLECTS ROMANIAN USAGE.

20. NEW PARA 9 (ANNEX 2, PART I) INSERTED TO INSURE THAT ROMANIAN EMPLOYEES NOT ENTITLED TO FACILITIES AFFORDED FOREIGN EMPLOYEES, SUCH AS CUSTOMS RIGHTS. LIMITATION DOES NOT AFFECT BASIC U.S. OBJECTIVE.

21. PARA 10 ANNEX 2 TERM QUOTE NATIONALITY UNQUOTE CHANGED TO QUOTE CITIZENSHIP UNQUOTE BECAUSE FORMER REFERS TO ETHNIC GROUPINGS IN ROMANIA, E.G., GERMANS, HUNGARIANS, ETC. CHANGE RETAINS BASIC U.S. OBJECTIVES.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INTERNATIONAL LAW, TRADE AGREEMENTS, NEGOTIATIONS, FOREIGN POLICY POSITION, ECONOMIC CONTROLS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 JAN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BUCHAR00322
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750029-0056
From: BUCHAREST
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750120/aaaaarvx.tel
Line Count: 254
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 75 BUCHAREST 321
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 10 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <10 JUN 2003 by ShawDG>; APPROVED <11 JUN 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: US-ROMANIAN TRADE AGREEMENT: CHANGES AND COMMENTARY
TAGS: EEW, RO
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006